

A licensed importing distributor of alcoholic liquor that distributes bottles of cognac with a cigar sealed within the bottle is not, in this instance, acting as a distributor of tobacco products under the Tobacco Products Tax Act of 1995. See 35 ILCS 145/10-5). (This is a GIL.)

September 21, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 9, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Pursuant to a conversation between our consultant and PERSON, I would like to provide you with the information on a new product that ABC is planning on distributing into the Illinois market this fall, and request a letter from your office that exempts our product from any tobacco permits or tax liabilities associated with the product.

The product will come in two sizes. (1) a 375ml bottle, and (2) a 750ml bottle of cognac. Within the bottle there will be a cigar that can be pulled from the inside of the bottle that is sealed within the bottle. The cigars value is approximately \$10.00 and the cognac's value is \$120.00 for the 375ml size and \$240.00 for the 750ml size; therefore making the total product distribution price \$130.00 for the 375ml size and \$260.00 for the 750ml size. ABC plans on distributing 1200-1500 cases per year.

After numerous conversations with PERSON, he informed our consultant that an official request letter from us to you with the information stated above would suffice in obtaining a waiver letter from IDOR with regards to, (1) filing the necessary paperwork for tobacco related permits and returns, and (2) not having the necessary tax liabilities associated with such permits and returns.

ABC appreciates your assistance with this matter.

DEPARTMENT'S RESPONSE:

Based on the limited information in your letter, it appears that you are an importing distributor of alcoholic liquor. As such, under the Liquor Control Act of 1934, a tax is imposed on you for the privilege of engaging in the business as an importing distributor of alcoholic liquor with respect to the cognac in question. (235 ILCS 5/8-1)

The question, then, is whether you are also acting as a distributor of tobacco products under the Tobacco Products Tax Act of 1995 when you distribute the cognac with the cigar packaged within the bottle. The tax under the Tobacco Products Tax Act of 1995 is imposed on any person engaged in business as a distributor of tobacco products. (35 ILCS 145/10-10) A business located in Illinois that meets the definition as a "distributor" of tobacco products under the Act is "any manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State". (35 ILCS 145/10-5) Based on the limited information you have provided, you do not appear to be "engaged in the business of selling tobacco products". You are, in fact, engaged in business as an importing distributor of alcoholic liquor. In this instance, a cigar is incorporated into the product you are distributing. Therefore, you would not be required to register as a distributor of tobacco products or to collect a tax under the Tobacco Products Tax Act of 1995. This determination is supported by the value of the respective products. The cognac is valued at approximately \$120 for the 375ml size and \$240 for the 750ml size, while the cigars are valued at approximately \$10 each. The value of the cigar is less than 10% of the value of the primary product, the cognac. Also, outside of this one product, you apparently do not distribute any tobacco products. This one, incidental product that is incorporated into the cognac does not cause your business to rise to the level as a "distributor" of tobacco products.

We should note, though, that while the incidence of the tax on the cigar does not appear to fall on you in this instance, this does not rule out the possibility that the incidence of the tax properly falls on another party in the distribution chain of the cigar.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel